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SMART'S ATTACK ON FRED KNIGHT BRANDED FALSE

(Continued from page one)

Richard to third parties on the condition named in black and white by his attorneys that Mrs. Knight should abandon all of the extremely valuable claims Mrs. Knight has under the second will and should allow probating of the third will to go through without contest on her part.

"In other words, Mr. Smart then and there put his child upon the market and named his price; the only point now being that the rights over the child he was willing to give to strangers he denies now to the child's own grandmother."

Mrs. Knight has postponed her trip to the coast and it is not certain when she will leave Hawaii.

Mrs. Knight's Attitude Toward Smart. The feeling toward Smart by Mrs. Knight is shown in the following excerpts from Attorney Kinney's affidavit of yesterday:

"That affiant (Mr. Kinney) is informed and believes that Mrs. Knight in asking Mr. Smart for the control and custody of the child has at all times distinctly recognized that it unquestionably was for the benefit of the child that he should be taught to love and respect his father and should be kept as far as possible from the humiliation of believing or suspecting that his father was not worthy of such respect and love."

"Furthermore, deponent (Mr. Kinney) is informed by Mrs. Knight that she has never addressed a discourteous word to Mr. Smart from the day she met him to the hour of her daughter's death except on the occasion when he had violated his honor and broken his pledge that he would wait a year before claiming her daughter's hand in marriage, on which occasion in her desperation she told him that she then believed that he was wholly mercenary and without honor; but that thereafter and as soon as she fully realized that her daughter's happiness depended upon making the best of the situation and up to the day of her daughter's death she has never allowed herself to address him otherwise than in a courteous manner, and that she distinctly denies that their relations have ever been marked by a single quarrel, and while she does not and cannot respect him, she does respect and has respected his rights, and would continue to do so after receiving the custody of the child, and that if more is required of any custodian many otherwise eligible would not be able to qualify."

Says Letter Omitted. In his affidavit Kinney further says that the recent correspondence on the compromise negotiated, as filed by Thompson, omits one very important letter. This letter he reproduces. It is as follows:

"Honolulu, January 23, 1915.

"Mr. W. A. Kinney, Honolulu.

"Dear Sir:

"Confirming our conversation of even date in regard to a tentative plan for settlement in the Smart litigation including not only the probate of the will but the custody of the minor child and in line with your suggestion that it be permanently embodied in writing to be in confidence, however, and solely for the purpose of a statement of the proposition for your consideration, that the third will be permitted to be probated, prior to the time of its probate, Mr. Smart to enter into an agreement in such form as we may mutually consent to by the terms of which he will convey to the child absolutely upon the child arriving at its majority two-thirds of the entire estate as contemplated by the will, one-third to remain in him. The income of the estate, until the child shall achieve its majority, to go 75 per cent to Mr. Smart and 25 per cent to the child. The child to remain in the territory of Hawaii until it is at least 13 years of age and not to be removed, excepting upon the consent of Mrs. Knight and Mr. Smart, unless certificate of two reputable physicians states the necessity for a change, one physician to be selected by each party and in the event of their failure to agree then the two to select a third and the decision of the majority of these to remain final. During the time the child shall remain in the territory of Hawaii it shall be in the custody of a person mutually selected, or in the event Mrs. Knight and Mr. Smart can not agree upon a person then each to have the right to nominate three people, the six to select a seventh and of the seven so chosen each shall alternately strike one person until but one remains, or in some other mutually agreed method of elimination."

"The costs thus far incurred by

either party to be presented to the court and in so far as allowed taxed against the estate, the attorney's fees for both parties to be presented to the court and in so far as allowed to be paid by the estate."

The following is reproduced as memoranda taken by a stenographer during a conversation between Kinney and Thompson on the compromise plan:

Mr. Kinney: What provision for access to the child and visiting and association with the child, both on the part of the grandmother and Mr. Smart?

Mr. Thompson: Each to have unlimited access to the child.

Mr. K.: Supposing there is dissatisfaction with the custodian or dissatisfaction on the part of Mrs. Knight with Mr. Smart's relations with the child, visiting the child, or vice versa, opposition on Smart's part to Mrs. Knight's actions in connection with her personal contact with the child, supposing for example Mr. Smart comes back and says Mrs. Knight has been visiting the child and using her right of access to poison the child's mind against him or Mrs. Knight that Smart has?

Mr. T.: I would not know how to cover that.

Mr. K.: Would you cover it by reserving to either complaining party the right to appeal to the court without being prejudiced by this agreement?

Mr. T.: Giving the court jurisdiction over the agreement?

Mr. K.: No, if either party is dissatisfied with the action of the custodian or dissatisfied with the use either is making of the right to visit the child would you agree the complaining party could then appeal to the court without being confronted with this agreement?

Mr. T.: Any agreement made shall be without prejudice to the right of either party for good cause shown to apply to the court for a guardian or for such general relief as the court may see fit to grant.

Mr. K.: How about Mr. Smart's attitude toward the trust deed, there has been a great deal of talk of his bringing suit.

Mr. T.: We have no quarrel with the trust deed, the beneficiary is dead. In other words any settlement of this question would be presumed to terminate all litigation over property rights and would be construed to mean acceptance and endorsement by Mr. Smart of the trust deed. You can incorporate in my letter that it will be in full settlement of all matters and in conformity and ratification of the trust deed heretofore made.

Mr. K.: Now this is all new to me.

Mr. T.: Let me tell you something: I left a meeting at the brewery at a quarter of 12 and as I passed the Stangenwald building I thought I would go over and see Kinney and they said they thought he was over in his room in the Young hotel; this is absolutely new to me.

Mr. K.: Of course there is great issue involved and my inquiry has been directed to the personal care and custody of the child, admitting that the central issue is the possession of the child.

Mr. T.: Well, I have given way a great deal more than the will contemplates so you see we are not after the money.

Mr. K.: Now let me browse over this. I will say your position is such as to arrest my attention and my favorable consideration, if there is any flaw in it it will be in the consideration of what the practical outcome will be in reference to the welfare of the child and that I would like to think over.

Mr. T.: Let me say this is just a proposal and the details will have to be worked out for me as well as for yourself. I have given you just a general idea of what I know Mr. Smart will do and what I think will be fair. In other words this is not intended to cover the technical part, just a general view.

In his affidavit filed in the court of Judge William L. Whitney of the second division of the first circuit court, Attorney W. A. Kinney discusses at length an interview held recently in Honolulu between Mrs. Knight and Smart. He says concerning it:

"That a long and trying interview took place, as deponent is informed, in which Mrs. Knight was left utterly prostrated, in which it developed that the main use made by Mr. Smart of said interview was to make a desperate and prolonged attempt to plant suspicion in the mind of Mrs. Knight against her husband, Fred Knight, and to bulldoze Mrs. Knight into an acceptance of absurd and impossible conditions as to the control of said child by menacing threats that he could destroy her married life and that it would be destroyed if she did not accept his terms."

Accuses Husband. "That among other things, as deponent is informed and believes, Mr. Smart at said interview told Mrs. Knight, 'We can prove terrible things against Mr. Fred Knight—things that if you knew you would divorce him, accompanying these statements by repeated assertions that 'I am telling you nothing but the truth and I want you to believe me,' which assertion was repeated again and again in said interview, with every effort to persuade Mrs. Knight into a belief in said charges. That Mr. Smart further stated at said interview, as deponent is informed and believes, that voluntary offers were pouring in to Mr. Thompson's office of those willing to offer evidence that would practically destroy Mr. Knight. Mr. Smart further represented that his attorneys were eager to get at Mrs. Knight as well as Mr. Knight, and that all this would have to be spread upon the records if he, Mr. Smart, said the word; that he was holding back out of consideration for her, but would be compelled to allow this attack to be made if she did not make a settlement satisfactory to him, Mr. Smart. That in said interview, as deponent is informed and believes, Mr. Smart proposed to Mrs. Knight that she should be given the child, but upon no written agreement, that she was simply

to take delivery of the child from him, that he was to reserve his parental control and authority over the child, that he was at liberty to take the child on visits to Virginia or to Honolulu upon his own decision, and that he was to have the right not merely to visit but to live in the same house with Mr. and Mrs. Knight when in San Francisco."

"Mr. Cathcart himself finally told deponent that Mr. Smart and Mrs. Knight had better not attempt to settle directly again; that Mrs. Knight has denied to deponent and Mr. Smart that any such accusations against her, and to the best of her knowledge and belief against her husband, are true and has stated that she is prepared to go through the ordeal of Mr. Smart's attack rather than give up the child; that she feels that her daughter and her granddaughter, Elizabeth, would both be alive today but for the carelessness and neglect of Mr. Smart, and that she looks upon his determined and prolonged attempt to drive the wedge of distrust between herself and her husband as simply an attempt to reach and destroy one more vital tie in her family relations."

"Tried to Dig Up Scandal."

"That the threats directed as aforesaid against Mrs. Knight manifestly disclose the intention to dig up any gossip or scandal that ever research can possibly find, however toothless with age, and regardless of the fact that anything of the kind in the past, if true, is too remote to have any possible bearing upon the propriety of now leaving this child in the hands of Mrs. Knight, that Mr. Smart knows that this same Mr. and Mrs. Knight brought up his wife Thelma beautifully and purely, and that there is no reason whatsoever why Richard can not be brought up by them as carefully and properly; and affiant charges that all of these threats have no element of good faith in them but are resorted to to coerce Mrs. Knight into accepting any terms Mr. Smart sees fit to impose and in this connection points out that in the interview in which Mr. Smart claimed to have possession of infamous charges against both Mr. and Mrs. Knight he offered almost in the same breath to put the child in their possession and custody, and wanted to make his own home with them whenever he was in San Francisco."

Smart Replies. In the answer filed at Kona yesterday in Henry Gaillard Smart's behalf Smart asserts among other things that his late wife was kept in ignorance of her property rights until she became of age; that within a few days after she was prevailed upon by her mother to execute the trust deed of the ranch, divesting herself and her family of legal title to it and of any residence right on the property.

Smart estimates the value of the Kona ranch at \$1,500,000 to \$2,000,000. Under this trust deed, Smart says, his wife, the rightful heir, received only a portion of the income, but Mrs. Knight, her mother, was to receive an income of \$1000 a month with certain provisions which will be fulfilled this year, raising Mrs. Knight's income to \$1500 a month.

He avers further that Thelma Parker was further induced to deed over to her mother the home in San Francisco, valued at \$75,000.

These statements are as follows:

"Respondent is informed and believes and upon such information and belief alleges that prior to the coming of age of the said Annie T. K. Parker Smart, she was kept in ignorance by the said petitioner, Elizabeth J. Knight, of her property rights and the extent thereof, and within a few days after the said Annie T. K. Parker Smart became of age, the said petitioner, Elizabeth J. Knight, and others, secured to be executed a deed of trust of substantially all of the property and estate of the said Annie T. K. Parker Smart, consisting almost entirely of the ranch and ranch property situated at Waimea, in the third judicial circuit of the territory of Hawaii, and known as the Parker ranch, which said ranch and ranch property has been variously estimated to be of the value of from \$1,500,000 to \$2,000,000, and that under said deed of trust the said Annie T. K. Parker Smart was divested of the legal title to the said ranch and ranch property and the whole thereof, and was entitled merely to receive a portion of the income derived from said ranch and ranch property during her lifetime. Deprived of Property.

"That under said deed of trust the said Annie T. K. Parker Smart was not only deprived as aforesaid of the legal title to said ranch and ranch property but said trust deed did not even reserve or set apart for herself or for her family any residence, or right of residence on said ranch property, and neither said Annie T. K. Parker Smart nor her family had the right at any time to go upon said ranch property except upon the consent and sufferance of the trustee named in said deed of trust. That under the terms and conditions of said deed of trust the said petitioner, Elizabeth J. Knight, was and is entitled to receive a large income out of said ranch and ranch property, and under the provisions of said deed of trust has continuously received since the execution thereof on April 25, 1912, up to the present time, an income of \$1000 a month and will, under the provisions thereof, within a year, receive an increased income to an amount of not less than \$1500 a month for the remainder of her life. That within a few days after the coming of age of the said Annie T. K. Parker Smart the said petitioner, Elizabeth J. Knight, further secured from the said Annie T. K. Parker Smart a deed and conveyance of a home the said Annie T. K. Parker Smart then owned in the city of San Francisco, Cal., which home is of the value of about \$75,000."

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Child Not Disinherited.

"Respondent further says that he is informed and believes and upon such information and belief alleges that counsel for the said petitioner, Elizabeth J. Knight, are making the contention that the last will, known as the third will of the said Annie T. K. Parker Smart, does not obligate respondent, Henry Gaillard Smart, to share with his child Richard any part of the estate or income of the estate, that there is not expressed in the will anything which legally obligates respondent to share the income of the estate with the child, and that the child is practically disinherited and not recognized by the will so far as any binding, legal obligation or right is concerned, and respondent further alleges in this behalf that he has requested his counsel, Frank E. Thompson, Esq., Fred W. Milverton, Esq., and John W. Cathcart, Esq., to see that the spirit as well as the letter of every wish of his late wife, Annie T. K. Parker Smart, as expressed by said last will, to wit, the third will, be carried out and has been advised by his said counsel that under the terms and conditions of such will the child Richard is entitled, as a matter of right and of law, to two-thirds of the income of such estate from the time of his majority, and that he, the said Henry Gaillard Smart, is entitled to one-third of the income of such estate only, after the coming of age of the said Richard Smart, and that if he, respondent, dies at any time before the death of the said Elizabeth J. Knight, the whole estate under the terms of the will, becomes the property of the child, Richard. Respondent further alleges that acting under instructions from him, his said counsel will, in the said probate proceedings, instituted as aforesaid, for the purpose of probating said third will, attempt to secure an interpretation of said will from the court consistent with the interpretation so placed upon it as above stated. That counsel for the said Elizabeth J. Knight have been advised as to the construction placed on said will by respondent's said counsel and have been advised as to the intention of respondent to secure an interpretation of said will as above stated, but nevertheless, as respondent is advised and believes, and upon such information and belief alleges, contemplate the carrying on of legal proceedings based upon the assumption that such expressed wishes and desires of the said Annie T. K. Parker Smart as set forth in said third will, are not binding and obligatory and that therefore the said child, Richard, is practically disinherited and that if such contemplated legal proceedings are carried out by counsel for the said Elizabeth J. Knight, they will result in a needless wasting and squandering of the estate of the said child Richard without any benefit to him whatsoever and for the sole benefit of the said Elizabeth J. Knight, and in furtherance of her plan as aforesaid to secure a larger share of the profits of said Parker ranch and ranch property."

Park Elects Officers.

Honolulu Athletic Park, Ltd., held a meeting last Monday night and elected the following officers: President, D. L. Conkling; vice-president, S. F. Fukumua; secretary, W. Chin Hoon; treasurer, J. J. Sullivan; directors, Thomas Treadway and Alex May. One more director is to be elected from the Oahu League.

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